

1 ARIZONA STATE BANKING DEPARTMENT

2 In the Matter of the Unlicensed Activity of:

No. 06F-BD010-BNK

3 SUZUKI OF TEMPE, INC. AND MICHAEL
4 PERRI, PRESIDENT
7855 South Test Drive
Tempe, Arizona 85284

CONSENT ORDER

5
6 Petitioners.

7 On OCTOBER 13, 2005, the Arizona State Banking Department ("Department") issued
8 a Notice of Hearing alleging that Petitioners had violated Arizona law. Wishing to resolve this
9 matter without the commencement of formal proceedings, without admitting liability, and solely for
10 the purpose of resolving this matter, Petitioners do not contest the following Findings of Fact and
11 Conclusions of Law, and consent to the entry of the following Order.

12 FINDINGS OF FACT

13 1. Petitioner Suzuki of Tempe, Inc. ("Suzuki of Tempe") is an Arizona corporation that
14 is not and was not at any time material herein, authorized to transact business in Arizona as a motor
15 vehicle dealer, within the meaning of A.R.S. § 44-281, *et seq.* The nature of Suzuki of Tempe's
16 business is that of a motor vehicle dealer within the meaning of A.R.S. § 44-281(3) by arranging
17 financing with banks and/or sales finance companies.

18 2. Petitioner Michael Perri ("Mr. Perri") is the President of Suzuki of Tempe. Mr. Perri
19 is not and was not at any time material herein authorized to transact business in Arizona as a motor
20 vehicle dealer within the meaning of A.R.S. § 44-281, *et. seq.*

21 3. Neither Suzuki of Tempe nor Mr. Perri is exempt from licensure as a motor vehicle
22 dealer within the meaning of A.R.S. § 44-282(G).

23 4. On March 28, 2005, Suzuki of Tempe applied for licensure with the Department as a
24 motor vehicle dealer. The license application disclosed that Suzuki of Tempe sells motor vehicle
25 contracts to Onyx Acceptance, Franklyn, AmTrust and Bank of America. During the licensing
26 process, the Arizona Attorney General's Office referred several consumer complaints to the

1 Department that were filed with that office by customers of Suzuki of Tempe. Among the
2 complaints, the customers alleged that Suzuki of Tempe sold them vehicles that were mechanically
3 deficient, in one instance, the customer stated that Suzuki of Tempe refused to let him drive the
4 vehicle prior to consummating the loan, and another disputed the agreed upon sale price of a vehicle.
5 The contracts used by Suzuki of Tempe improperly disclose to the borrowers that Suzuki of Tempe
6 is regulated by the Arizona State Banking Department which is in violation of A.R.S. § 44-287(B)(8)
7 entitled "Contents of Contract."

8 5. On June 6, 2005, the Department sent a letter to Suzuki of Tempe stating that the
9 Department had reason to believe that Suzuki of Tempe was operating in Arizona without the benefit
10 of a motor vehicle dealer license, and gave Suzuki of Tempe an opportunity to respond by June 16,
11 2005.

12 6. On June 14, 2005, Suzuki of Tempe replied to the Department by denying that Suzuki
13 of Tempe is an unlicensed entity and stated that Suzuki of Tempe is the trade name under which
14 Scottsdale Suzuki Superstore, Inc., a licensed motor vehicle dealer, operates. Suzuki of Tempe
15 further stated that Suzuki of Tempe does not wish to involuntarily or voluntarily cease doing
16 business.

17 7. Department records show that on August 3, 2004, Scottsdale Suzuki Superstore, Inc.
18 applied for and obtained permission to establish a branch office at 7855 South Test Drive, Tempe,
19 Arizona. While the branch license application listed Suzuki of Tempe as the licensee's trade name,
20 the licensee was informed that the Suzuki of Tempe trade name could not be used unless the licensee
21 obtained a trade name certificate from the Secretary of State's Office. In the absence of the required
22 trade name certificate, the branch license was issued under the name Scottsdale Suzuki Superstore,
23 Inc. The branch license was later surrendered and the license was closed effective January 18, 2005.

24 8. Scottsdale Suzuki Superstore, Inc. is not currently licensed to conduct business at
25 7855 South Test Drive, Tempe, Arizona.

26 ...

9. According to the Secretary of State's records, the trade name Suzuki of Tempe is registered to Suzuki of Tempe, Inc.

10. On July 20, 2005, the Department received a copy of Suzuki of Tempe's June 2005 balance sheet and statement of income and expense. According to the statement of income and expense, Suzuki of Tempe generated \$4,676,128 in total sales for the six months ended June 30, 2005. New and used car sales accounted for approximately \$4,267,128 of the total.

11. Based upon the above findings, the Department issued and served upon Suzuki of Tempe and Mr. Perri an Order to Cease and Desist; Notice of Opportunity For Hearing; Consent to Entry of Order ("Order to Cease and Desist") on September 14, 2005.

12. On September 20, 2005, Petitioners filed a Request For Hearing to appeal the Order to Cease and Desist.

CONCLUSIONS OF LAW

1. Pursuant to Title 6 and Title 44, Chapter 2.1 of the Arizona Revised Statutes, the Superintendent is charged with the duty to regulate all persons engaged in the motor vehicle dealer business and with the enforcement of statutes, rules and regulations relating to motor vehicle dealers.

2. Suzuki of Tempe's and Mr. Perri's conduct as alleged above constitutes the conduct of a motor vehicle dealer in the State of Arizona without having first applied for and obtained a motor vehicle dealer license under Chapter 2.1 of Title 44, in violation of A.R.S. § 44-282(A).

3. Neither Suzuki of Tempe nor Mr. Perri meet any of the exemptions to the licensing requirements set forth in A.R.S. § 44-282(G).

4. The violations set forth above constitute grounds for (1) the issuance of an order pursuant to A.R.S. § 6-137 directing Petitioners to cease and desist from the violative conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and transactions, and (2) the imposition of a monetary civil penalty pursuant to A.R.S. § 6-132.

• • •

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

2. Suzuki of Tempe and Mr. Perri shall immediately pay to the Department a civil money penalty in the amount of five thousand dollars (\$5,000.00). Suzuki of Tempe and Mr. Perri are jointly and severally liable for payment of the civil money penalty.

4. This Order shall become effective upon service, and shall remain effective and enforceable until such time as, and except to the extent that, it shall be stayed, modified, terminated or set aside.

Richard C. Houseworth
Superintendent of Banks

CONSENT TO ENTRY OF ORDER

1. Petitioners acknowledge that they have been served with a copy of the foregoing Findings of Fact, Conclusions of Law, and Order in the above-referenced matter, have read the same, are aware of their right to an administrative hearing in this matter, and have waived the same.

2. Petitioners admit the jurisdiction of the Superintendent and consent to the entry of the foregoing Findings of Fact, Conclusions of Law, and Order.

3. Petitioners state that no promise of any kind or nature has been made to induce them to consent to the entry of this Order, and that they have done so voluntarily.

4. Petitioners acknowledge that the acceptance of this Agreement by the Superintendent is solely to settle this matter and does not preclude this Department, any other agency or officer of this state or subdivision thereof from instituting other proceedings as may be appropriate now or in the future.

5. Michael Perri, signing on behalf of Suzuki of Tempe, Inc., represents that he is the President, and that, as such, has been authorized by Suzuki of Tempe, Inc. to consent to the entry of this Order on its behalf.

6. Petitioners waive all rights to seek judicial review or otherwise to challenge or contest the validity of the Cease and Desist Order or Notice of Hearing.

DATED this 31 day of October, 2005.

By: Michael Perri
Michael Perri, President
Suzuki of Tempe, Inc.

ORIGINAL of the foregoing filed this 8th
day of Nov, 2005, in the office of:

Richard C. Houseworth; Superintendent of Banks
Arizona State Banking Department
ATTN: June Beckwith
2910 N. 44th Street, Suite 310
Phoenix, AZ 85018

COPY mailed same date to:

Lewis D. Kowal, Administrative Law Judge
Office of the Administrative Hearings
1400 West Washington, Suite 101
Phoenix, AZ 85007

1 Craig A. Raby, Assistant Attorney General
Office of the Attorney General
2 1275 West Washington
Phoenix, AZ 85007
3

4 Mike Fowler, Senior Examiner
Richard Traveler, Senior Examiner
Arizona State Banking Department
5 2910 N. 44th Street, Suite 310
Phoenix, AZ 85018
6

7 AND COPY MAILED SAME DATE by
Certified Mail, Return Receipt Requested, to:

8 Michael Perri, President
Suzuki of Tempe, Inc.
9 7855 S. Test Drive
Tempe, AZ 85284
10 Petitioners

11 Loren Molever, Esq.
HYMSON & GOLDSTEIN, P.C.
12 14646 N. Kierland Boulevard, Suite 255
Scottsdale, Arizona 85254
13 Attorneys for Petitioners

14
15 
926990 CPA05-274